Security Walls, LLC *and* International Union Security Police Fire Professionals of America (SPFPA) and its Local No. 554. Case 13–CA–114946

April 6, 2017

DECISION AND ORDER

BY ACTING CHAIRMAN MISCIMARRA AND MEMBERS PEARCE AND MCFERRAN

This matter comes before the Board upon the joint motion of Respondent Security Walls, LLC, Charging Party International Union Security Police Fire Professionals of America (SPFPA) and its Local 554, and the General Counsel to waive a hearing and decision by an administrative law judge and to transfer the proceedings to the Board for a decision based on a jointly stipulated record. The question presented is whether the Respondent violated Section 8(a)(5) and (1) of the National Labor Relations Act by disciplining a bargaining unit employee without first giving the Union an opportunity to bargain. For the reasons discussed below, we shall grant the parties' joint motion, and we shall dismiss the complaint.

In their joint motion, the parties agreed that the joint stipulation of facts, statement of issues presented, each party's statement of position, and the attached exhibits, including the charge, the complaint as amended, the answer to the amended complaint, and the Board's earlier decision in *Security Walls, LLC,* 361 NLRB No. 29, slip op. (2014), constitute the entire record in this case.

We grant the parties' joint motion to transfer the proceedings to the Board, and we approve their joint stipulation and attached exhibits. On the basis of the stipulated record and statements of position, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a limited liability company with an office and place of business in Knoxville, Tennessee, has been engaged in providing security services for Argonne National Laboratory located in Argonne, Illinois, hereafter referred to as Respondent's facility. In conducting its operations during the 12-month period ending February 18, 2015 (the date of the General Counsel's second amended complaint), the Respondent performed services for entities located outside the State of Tennessee valued in excess of $50,000. At all material times, the Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. At all material times, the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. STIPULATED FACTS

On about December 12, 2012, the Respondent recognized the Union as the exclusive collective-bargaining representative of a unit of guards and sergeants performing security duties at the Respondent's facility. On February 12, 2014, the General Counsel, through the Regional Director for Region 13, issued a complaint, which he amended on March 12, 2014, alleging in relevant part that since on or about August 18, 2013, and prior to the parties reaching final agreement on a first contract for this unit, the Respondent refused to bargain with the Union before suspending and later discharging employee Matthew Terres, in violation of Section 8(a)(5) and (1) of the Act. These allegations were based on the Board's decision in *Alan Ritchey, Inc.*, 359 NLRB 396 (2012), which held that an employer is obligated to provide notice and an opportunity to bargain before imposing certain types of discipline, including discharge, on employees represented by a union but not yet covered by a collective-bargaining agreement. In the joint stipulation, while contesting liability, the Respondent admitted that it discharged Terres without bargaining with the Union.

Discussion

At the time of the Decision and Order in *Alan Ritchey*, the composition of the Board included two persons whose appointments to the Board had been challenged as constitutionally infirm. On June 26, 2014, the United States Supreme Court issued its decision in *NLRB v. Noel Canning*, 134 S.Ct. 2550 (2014), holding that the challenged appointments to the Board were not valid. In light of *Noel Canning*, the Board recently examined de novo the pre-imposition notice and opportunity-to-bargain requirements first announced in *Alan Ritchey*. See *Total Security Management, Inc.*, 364 NLRB No. 106 (2016). The Board reaffirmed those requirements, but found that applying the rule to cases arising before the issuance of *Total Security* would constitute manifest injustice. 364 NLRB No. 106, slip op. at 11–12.

There is no dispute that this case was pending at the time *Total Security* was decided. Accordingly, given *Total Security*'s prospective-only application, we find that the Respondent did not violate Section 8(a)(5) and (1) as alleged by disciplining Terres without first giving the Union notice and an opportunity to bargain. For that reason, we shall dismiss the complaint. See *Paragon Systems, Inc.*, 364 NLRB No. 134 (2016).[1]

[1] Acting Chairman Miscimarra disagrees with the decision in *Total Security* for the reasons discussed in his separate opinion in that case (*Total Security*, slip op. at 17–42 (then Member Miscimarra, concurring

ORDER

The complaint is dismissed.

Dated, Washington, D.C. April 6, 2017

Philip A. Miscimarra, Acting Chairman

Mark Gaston Pearce, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

in part and dissenting in part)), but agrees with his colleagues that the Respondent's relevant conduct here did not violate the Act under that decision.